

The Honorable Barbara J. Rothstein

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON

RICARDO SALOM, CATHERINE
PALAZZO as assignee for Ruben Palazzo, and
PETER HACKINEN, *on their own behalf and
on behalf of other similarly situated persons,*

Plaintiffs,

VS.

NATIONSTAR MORTGAGE LLC,

Defendant.

Case No. 2:24-cv-00444-BJR

NATIONSTAR MORTGAGE LLC'S MOTION FOR SUMMARY JUDGMENT

ORAL ARGUMENT REQUESTED

TABLE OF CONTENTS

	<u>Page</u>	
I.	INTRODUCTION	1
II.	FACTUAL BACKGROUND	4
	A. Nationstar	4
	B. Loan Servicing Industry	7
	C. Plaintiff Richardo Salom.....	8
	D. Plaintiff Catherine Palazzo.....	9
	E. Plaintiff Peter Hackinen	10
	F. Uniform Instruments	11
III.	ARGUMENT	11
	A. It would be contrary to law—and a policy harmful to consumers—to deny Plaintiffs' freedom to contract with Nationstar to obtain optional, additional services that Nationstar is not required to provide by law and that are outside the contract.....	11
	1. Nationstar had no duty arising from statute to provide Plaintiffs with expedited delivery of a payoff quote and expedited delivery services fall entirely <i>outside</i> the scope of the loan agreements.....	12
	2. Absent a pre-existing duty, Plaintiffs had freedom of contract to accept Nationstar's offer for expedited delivery of their payoff quotes and in return pay for that service.	13
	3. To show that charging a fee for additional services is contrary to public policy, Plaintiffs must identify a clear policy recognized by statute.	15
	4. Plaintiffs do not identify any statute that prohibits servicers from offering – and from borrowers accepting—services outside the loan agreement for additional fees.	15
	5. Courts routinely hold that borrowers can request—and loan servicers may provide for an additional fee—services outside of those encompassed by the loan documents.....	17
	6. Allowing borrowers to purchase optional, additional services from loan servicers is not only permitted by law but is sound policy.	19
	B. Based on the undisputed material facts, Nationstar is entitled to summary judgment on Plaintiffs' claims.	20
	1. Nationstar is entitled to summary judgment on Plaintiffs' unjust enrichment claim.....	20
	2. Nationstar is entitled to summary judgment on Plaintiff Hackinen's FDCPA claim.....	21

1	3.	Nationstar is entitled to summary judgment on Plaintiffs' claim for violations of state debt collection and mortgage servicing laws.....	22
2	IV.	CONCLUSION.....	24
3			
4			
5			
6			
7			
8			
9			
10			
11			
12			
13			
14			
15			
16			
17			
18			
19			
20			
21			
22			
23			
24			
25			
26			
27			
28			

1
2 **TABLE OF EXHIBITS**
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Exh. No.	Title or Description	Bates Nos.	Confidential
1	Fannie Mae Decl.		
2	Ehinger Deposition Transcript (II)		
3	Ehinger Declaration (I)		
4	Marcel Bryar Expert Report		
5	Ehinger Deposition Transcript (I)		
6	Fee Matrix	NSM_SALOM 019942	Yes
7	Palazzo Interrogatory Response		
8	Web Payoff Request Sample	NSM_SALOM 020061	
9	Ehinger Declaration (II)		
10	Consumer service representative script	NSM_SALOM 20059	
11	IVR Script Sample	NSM_SALOM 020056	Yes
12	Salom Deed of Trust	NSM_SALOM 005882	
13	Detail Transaction History	NSM_SALOM 019197-190202	
14	Salom Assignment	NSM_SALOM 005917	
15	Communication Profile	NSM_SALOM 019224	
16	Salom Payoff Quote	NSM_SALOM 009958	
17	Salom Recorded Release	NSM_SALOM 005933	
18	Salom Interrogatory Response		
19	Salom Deposition Transcript		
20	Palazzo Note	NSM_SALOM 002557	
21	Palazzo Deed of Trust	NSM_SALOM 002562	
22	Palazzo Welcome Letter	NSM_SALOM 002714	
23	Palazzo Assignment	NSM_SALOM 002669	
24	<i>Intentionally Left Blank</i>		
25	Palazzo Communication History	NSM_SALOM 005876	
26	Palazzo Deposition Transcript		
27	Palazzo Payoff Quote	NSM_SALOM 003169	
28	Palazzo Transaction History	NSM_SALOM 019957	
29	Hackinen Deed of Trust	NSM_SALOM 000005	

Exh. No.	Title or Description	Bates Nos.	Confidential
30	Hackinen Welcome Letter	NSM_SALOM 000635	
31	Hackinen Deposition Transcript		
32	Hackinen Communication History	NSM_SALOM 002548-2553	
33	Hackinen Transaction History	NSM_SALOM 020017-20018	
34	Hackinen Payoff Quotes	NSM_SALOM 001478-001484, 001473-001477, 001492- 001495, 001485-001487	

1 Defendant Nationstar Mortgage LLC d/b/a Champion Mortgage Company (“Nationstar”),
 2 pursuant to Fed. R. Civ. P. 56, moves this Court to enter judgment against Plaintiffs Richardo Salom
 3 (“Salom”), Catherine Palazzo (“Palazzo”) and Peter Hackinen (“Hackinen”) (collectively
 4 “Plaintiffs”) on all claims asserted in their Amended Complaint.

5 The Court previously found “that an initial decision on the legality of expedited payoff
 6 quote [fees] will eliminate or narrow the claims in this case.” *See* ECF No. 88.¹ Pursuant to the
 7 Court’s direction, Nationstar now moves for summary judgment on the grounds that charging a fee
 8 for a voluntary, optional service requested by the Plaintiffs, and not governed by the loan
 9 agreements or by statute, is legally permissible pursuant to a separate agreement for services, which
 10 the parties are allowed to form. This position is well supported by both law and industry standard.

11 I. INTRODUCTION

12 As a threshold matter, this case is not a “pay-to-pay” case, despite Plaintiffs repeated efforts
 13 to make it so. An expedited delivery fee is a fee paid for an optional service—here, expedited
 14 delivery of a payoff statement (*i.e.* information delivered *faster*)—separate from services provided
 15 pursuant to the loan agreement. As numerous courts have held, it is not a fee tied to making payment
 16 of a mortgage loan. Nor is a payoff statement an attempt to collect a debt. Instead, a payoff
 17 statement is an informational statement that a borrower may request for any number of reasons
 18 wholly unrelated to paying off a loan. Hence, this case is (nor can it be) governed by the Fair Debt
 19 Collection Practices Act (“FDCPA”) or its state analogues.

20 What this case *is* about the parties’ freedom of contract—a fundamental right long enshrined
 21 in the American legal system. For more than a century, the U.S. Supreme Court has recognized
 22 that “it is a matter of great public concern that freedom of contract be not lightly interfered with.”
 23 *Steele v. Drummond*, 275 U.S. 199, 205 (1927). This case poses the question: can parties to an
 24 existing contract make a second agreement for an *additional* service that is not otherwise governed

25 ¹ The Court’s Order declined to reconsider its ruling that Plaintiffs were not required to give notice under
 26 Section 20 of their loan agreements as to their statutory claims and gave proper notice of their unjust
 27 enrichment claims. ECF 88, n.1. Nationstar raises the issue here solely to preserve it for appeal. Regardless
 28 of whether notice to the entities owning the loans can serve as “indirect notice” to Nationstar, ECF No. 77,
 at 11, which Nationstar disputes, the evidence demonstrates that Plaintiffs did *not* give notice to the
 owners of their loans before they filed their Complaint in this case. Their claims therefore are barred.

1 by the first contract or required by law? Plaintiffs' position in this case is that the parties cannot
 2 contract for additional services. By Plaintiffs' logic, once there is an existing debtor/servicer
 3 relationship, it becomes *illegal* for a loan servicer to provide consumers different, additional,
 4 optional services—not otherwise subject to the existing contract or required by law—for a fee. This
 5 is ridiculous. It is also not the law.

6 Practically, if a borrower is refinancing or paying off a mortgage through the sale of their
 7 house and needs a payoff quote, the law allows up to a *week—or longer*, depending on the speed
 8 of mail delivery—before the borrower receives that payoff quote. While that timeline may work
 9 for the simply curious homeowner, it is not difficult to imagine a stressed consumer selling their
 10 home wanting a payoff quote much faster—within hours or even minutes. Anything slower and a
 11 home purchase might not close, or a refinance might fall through. **How does a consumer obtain**
 12 **a payoff quote faster than 7 business days?** The answer is simple: they pay for *expedited* service.
 13 Paying for expedited service is not a novel concept. Our world is replete with options for consumers
 14 to pay for expedited service. For example, you can pay extra to send a letter via Priority Mail
 15 Express, you can pay an additional \$60.00 to expedite your passport application to get it in time for
 16 your trip, and you can pay a “premium processing fee” up to \$2,805 to expedite immigration
 17 paperwork.² Expedited fees are not just routinely approved by the federal government, states also
 18 routinely advertise expedited services for additional fees.³

19 Fees for expedited services are also normal—and routinely approved by courts—in the
 20 mortgage loan servicing industry. For example, Fannie Mae is a “leading source of financing for
 21 residential mortgages” in the U.S. and publishes a guide that “establishes loan servicing guidelines”
 22 for the industry. Fannie Mae Decl. ¶¶ 4, 7, Ex. 1. Fannie Mae’s servicing guide defines “allowable

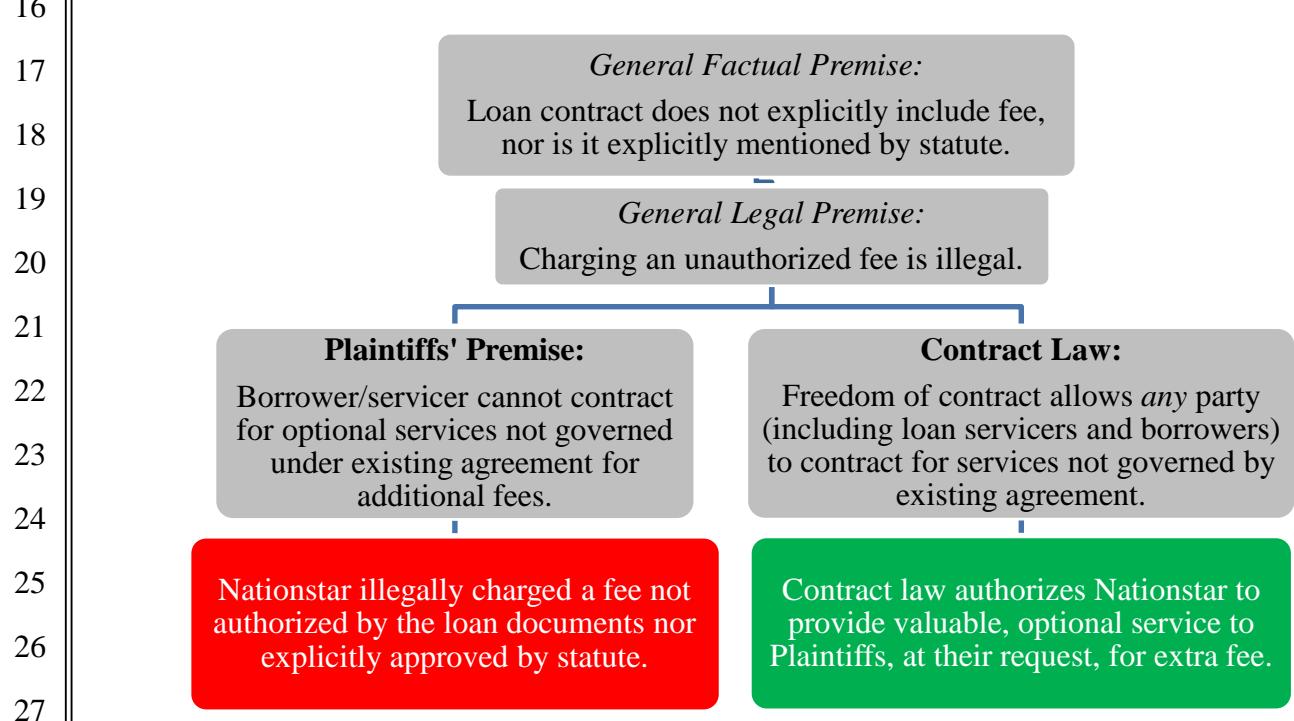
24 ² See Mail & Shipping Services, USPS.com, <https://www.usps.com/ship/mail-shipping-services.htm> (last
 25 visited March 25, 2025); Get My Passport Fast, U.S. Dept of State,
<https://travel.state.gov/content/travel/en/passports/get-fast.html> (last visited March 25, 2025); G-1055, Fee
 26 Schedule, U.S. Citizenship & Immigration Services, <https://www.uscis.gov/g-1055?form=i-907> (last
 27 visited Mar. 26, 2025).

28 ³ See Charter Business Services - SDAT, Maryland Dep’t Assessments & Taxation,
<https://dat.maryland.gov/businesses/pages/default.aspx> (authorizing \$425.00 “expedited fee in addition to
 the base filing fee”); Wash. Admin. Code § 434-112-080(3) (“Expedited service requests for filing records
 will be completed within three working days of submission for an expedited service fee of \$100.”).

fees for servicing” to explicitly *include* fees for “providing expedited service....” See A2-3-05, Fees for Certain Servicing Activities, Fannie Mae (Nov. 8, 2017), <https://servicing-guide.fanniemae.com/svc/a2-3-05/fees-certain-servicing-activities>.

Expedited service fees are not new—and neither are consumer challenges to them. For decades courts have considered challenges to fees for expedited delivery of payoff quotes, and routinely found that it is entirely proper for a loan servicer to charge a separate fee for an additional service. *E.g., Davis v. Homecomings Fin.*, No. C05-1466RSL, 2006 U.S. Dist. LEXIS 77331, at *14 (W.D. Wash. Oct. 10, 2006) (recognizing that the consumer “received the benefit of receiving the [payoff] statement in an expedited manner”); *Krause v. GE Capital Mortg. Servs.*, 314 Ill. App. 3d 376, 385-86 (2000) (finding proper “fees were charged for expedited delivery by facsimile requested by the plaintiffs” when “[t]here is no language in the contracts that prohibits the imposition of a charge for services provided outside the contracts”).

Plaintiffs reach their contrary conclusion from a flawed premise: that borrowers and loan servicers cannot agree to additional services after the initial loan agreement. This case illustrates how the starting premise determines the conclusion.



An expedited payoff quote is a service that is not required by law or governed by the loan agreements. It requires the loan servicer to invest in additional corporate infrastructure—in both human and technological resources. But it can have great value to the harried consumer who needs a payoff quote in minutes instead of a week later. The terms of Nationstar’s offer were explicitly provided, either orally or in writing depending on how the consumer requested the payoff quote. Plaintiffs accepted Nationstar’s offer, Nationstar provided the agreed service, and Plaintiffs provided the agreed consideration (\$25.00). There was offer, acceptance, and consideration (*i.e.*, a contract) between Plaintiffs and Nationstar: an extra service for a set fee. This is explicitly authorized by contract law. Further, expedited processing fees are approved by industry practice.

Plaintiffs ask this Court to hold as a matter of law that Nationstar may not charge for expedited delivery of a payoff quote. This is obviously a very significant request. It asks the Court to find that the parties’ inviolate freedom of contract is severely circumscribed to exclude anything outside of the explicit terms of the original loan agreement—in other words, over the space of a thirty (30) year mortgage, servicers may *never* offer new services to consumers *unless* Congress or a state enacts a statute in the interim explicitly validating the fee.

Nationstar asks the Court to side with multiple centuries of contract law that presumes contracts are both allowed and presumptively enforceable, preserving to consumers the choice to purchase an additional service for an extra fee. The alternative, which Plaintiffs inexplicably advocate, is to deny consumers the option to contract for additional, valuable services they request.

II. FACTUAL BACKGROUND

A. Nationstar

1. Nationstar services consumer mortgage loans on behalf of private investors and government sponsored entities (“GSEs”), such as Fannie Mae and Freddie Mac. Ehinger Dep. (II) 26:2-11 (Fannie Mae); 30:10-19 (Freddie Mac), Ex. 2.

2. Nationstar maintains robust legal compliance procedures, including auditing. Ehinger Dep. (II) 89:12-15 (explaining that Nationstar is audited internally by compliance as well as by investors, states, and federal regulators). Nationstar’s policy is to comply with federal, state, and GSE requirements, which are coded into Nationstar’s servicing system for loan-level

1 application, including when processing and delivering payoff statements. Ehinger Decl. ¶¶ 9-10,
 2 **Ex. 3**; Ehinger Dep. (II) 15:12-17:25, 28:9-21, 118:20-120:6 & Ex. 44 thereto.

3 3. A payoff quote or payoff statement identifies “how much cash a borrower needs by
 4 a certain date to pay off the borrower’s loan, including accrued interest and any outstanding fees
 5 and expenses incurred by the borrower in connection with the loan.” Bryar Rep. ¶ 4, **Ex. 4**.

6 4. Producing a payoff statement is a complex process. Bryar Rep. ¶ 51; Ehinger Dep.
 7 (I) 137:18-138:3, 140:1-10, **Ex. 5** (explaining various departments and systems involved in
 8 preparing payoff quotes). The servicer must account for the loan’s outstanding balance, interest
 9 accrued since the borrower’s last payment, any fees the borrower owes, and any refunds due to the
 10 borrower. Bryar Rep. ¶ 51. Each borrower’s unique circumstances further complicate the
 11 preparation of a payoff statement. *Id.* For instance, one borrower may need to pay only the unpaid
 12 principal balance and accrued interest, while another may owe additional fees and have insurance
 13 proceeds in escrow related to a hazard insurance claim. *Id.* A third borrower might owe fees and
 14 costs incurred by the lender due to delinquency. *Id.* Servicers must design systems and processes
 15 to effectively address all these varying scenarios. *Id.*

16 5. Nationstar ordinarily processes written requests for a payoff quote within seven (7)
 17 business days. Ehinger Decl. ¶ 8. Nationstar does not charge for payoff quotes processed and
 18 delivered in the ordinary course to consumers in Maryland and Washington. *Id.*

19 6. Nationstar also offers expedited delivery of payoff quotes for an additional state-
 20 specific fee. Ehinger Dep. (I) 108:18-109:7; Fee Matrix, **Ex. 6**. This can take mere seconds.
 21 Palazzo Interrog. Resp. 12, **Ex. 7**.

22 7. To provide this service, Nationstar invested millions of dollars to develop a system
 23 to expedite payoff quotes, often delivered within only a few hours. Ehinger Decl. ¶ 15. In addition
 24 to upfront costs in system development, Nationstar incurs ongoing costs to maintain and update the
 25 technology to generate accurate payoff quotes on an expedited basis. *Id.* The expedited delivery
 26 fee compensates Nationstar for its costs to perform this service. *Id.* ¶ 16.

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1 8. In offering expedited delivery of payoff quotes, Nationstar considers “all of [the]
 2 federal and regulatory and investor guidelines.” Ehinger Dep. (II) 14:17-21. Nationstar does not
 3 charge any payoff statement fees prohibited by law. Ehinger Dep. (II) 89:12-15.

4 9. The expedited delivery fee is clearly disclosed to consumers. Ehinger Decl. ¶ 17.
 5 Nationstar will not assess an expedited delivery fee unless the consumer has agreed to the fee.
 6 Ehinger Decl. ¶ 18. Nationstar also does not require payment of the fee to release a lien. *Id.* ¶ 22.

7 10. The expedited delivery fee is specifically disclosed online, with consumers required
 8 to check that they “understand” an expedited delivery fee may apply before continuing with an
 9 “INSTANT – WEB” payoff request. Ehinger Dep. (II) 128:9-13 (explaining sample); Sample Fee
 10 Disclosure, **Ex. 8:**

11 2. HOW SOON DO YOU WANT IT?

12 Any fees for expedited delivery will be assessed to your account and appear on your billing statement as an additional
 amount to be paid with your regular payment. No payment is due now.

- INSTANT - WEB**
\$45 (\$20 expedited fee + \$25 preparation fee)
- 4-6 BUSINESS DAYS - MAIL**
\$25 (preparation fee)

16 I understand that an expedited delivery fee and/or preparation fee may apply, as indicated above.

17 **SUBMIT PAYOFF REQUEST**

19 11. The expedited delivery fee is also verbally disclosed to consumers on the phone.
 20 Ehinger Decl. (II) ¶ 12, **Ex. 9;** Ehinger Dep. (II) 127:9-16. Nationstar consumer service
 21 representatives utilize a “conditional” script prompted by account-specific codes based on
 22 state/investor/loan type. Ehinger Dep. (II) 120:7-121:10; Payoff Quote Conditional Script, **Ex. 10.**
 23 The script includes disclosure of a \$25 expedited delivery fee for Washington and Maryland
 24 consumers, unless an alternate fee controls (e.g., FHA loan with \$5.00 cap). *Id.*

25 12. Similarly, through Nationstar’s interactive voice response (“IVR”) telephone
 26 system, a borrower can request a quote. IVR Script Sample, **Ex. 11.** Nationstar’s IVR specifically
 27 discloses that there is a fee for expedited delivery of a payoff statement but there “will not be any

1 delivery fees if you choose to receive your quote by mail.” *Id.* Nationstar’s IVR requires a borrower
 2 to consent to the fee before the system will authorize expedited delivery of a payoff quote. *Id.*

3 13. Nationstar’s conditional guidelines, as built into its live agent, IVR, and website
 4 systems, generate customized payoff quote delivery options for borrowers in accordance with
 5 applicable law and industry standards. Ehinger Dep. (II) 16:4-13, 28:9-21, 119:4-120:6, 126:20-24.

6 **B. Loan Servicing Industry**

7 14. GSEs, like Fannie Mae and Freddie Mac, were chartered by Congress with some
 8 provisions that supersede state and local laws. Bryar Rep. ¶ 45. The GSEs are regulated by the
 9 Federal Housing Finance Agency (“FHFA”). *Id.* ¶ 46.

10 15. The GSEs outsource servicing of their loans to mortgage servicers such as
 11 Nationstar. *Id.* ¶ 47. The GSEs publish servicing guidelines that mortgage servicers must follow
 12 when servicing GSE loans. *Id.* ¶ 48. The GSEs routinely audit mortgage servicers for compliance
 13 with the servicing guidelines. Ehinger Dep. (II) 28:9-21 (Fannie Mae), 30:20-31:6 (Freddie Mac).

14 16. The FHFA is responsible for approving all GSE servicing guidelines, which means
 15 that if a practice is approved by GSE servicing guidelines, it is permitted (even expected) by
 16 industry standards unless expressly prohibited by law. Bryar Rep. ¶ 48.

17 17. Charging an expedited delivery fee for payoff quotes is explicitly authorized by the
 18 GSEs, making it consistent with industry standards. Bryar Rep. ¶¶ 52-67; Ehinger Dep. (II) 75:5-
 19 11 (other loan servicers charge similar fees).

20 18. For example, Fannie Mae is a “leading source of financing for residential
 21 mortgages” in the U.S. and publishes a guide that “establishes loan servicing guidelines” for the
 22 industry. Fannie Mae Decl. ¶¶ 4, 7. Fannie Mae’s servicing guide defines “allowable fees for
 23 servicing” to explicitly *include* fees for “providing expedited service.” *See* A2-3-05, Fees for
 24 Certain Servicing Activities, Fannie Mae (Nov. 8, 2017), <https://servicing-guide.fanniemae.com/svc/a2-3-05/fees-certain-servicing-activities>.

26 19. The FHFA and the GSEs do not treat expedited service fees as “junk fees.” Bryar
 27 Rep. ¶ 63. The GSEs depend on loan servicers to service GSE loans. *Id.* Consequently, the GSEs
 28 face the risk that inadequate servicer compensation will lead to insufficient investments in proper

1 loan servicing. *Id.* Conversely, if servicer compensation is excessively high, it may render the
 2 loans unaffordable for borrowers. *Id.* The goal of FHFA and the GSEs is “to provide borrowers
 3 with ‘[a]ccess to a competitive, inexpensive mortgage market’ while at the same time ensuring that
 4 servicing is ‘profitable.’” *Id.* (quoting *Servicing Compensation Initiative pursuant to FHFA*
 5 *Directive in Coordination with HUD* (February 2011)). Fees for additional services, such as
 6 expedited processing, help “strike a balance between servicer profitability and affordability for
 7 borrowers.” *Id.* ¶ 64. Without these fees being charged, “FHFA and the GSEs would have to
 8 increase the servicing fee for loans. That increase would, in turn, increase the cost of loans for every
 9 borrower since, as explained above, the servicing fee is paid out of a loan’s interest income, which
 10 is paid by all borrowers.” *Id.* Charging these fees separately means “all borrowers—including the
 11 ones who elect to use ancillary services—***pay lower interest rates.***” *Id.* (emphasis added).

12 **C. Plaintiff Richardo Salom**

13 20. On June 23, 2003, Salom executed a note in the amount of \$286,500, secured by a
 14 deed of trust on 14608 Quince Orchard Road, Gaithersburg, MD. Deed of Trust, Ex. 12.

15 21. Nationstar d/b/a Mr. Cooper began servicing the Salom Loan effective March 1,
 16 2019, at which time the loan was current. Transaction History, Ex. 13. The Deed of Trust was
 17 assigned to Fannie Mae on or about February 9, 2016. Assignment, Ex. 14.

18 22. On or about June 29, 2022, Salom’s agent (title company) submitted a website
 19 request for a payoff quote on Salom’s Loan. Communication History, Ex. 15; Am. Compl. ¶ 82
 20 (stating that Salom’s “agent requested a payoff statement from Nationstar”).

21 23. In making this request, Salom’s agent requested expedited delivery of the payoff
 22 quote to a fax number and acknowledged that additional fees may apply. *Id.*; see also Request a
 23 Payoff Quote, Third Party Request, Mr. Cooper, [https://www.mrcooper.com/broker_](https://www.mrcooper.com/broker_agent_services/payoff_quote_request)
 24 agent_services/payoff_quote_request. The fee was identified on the payoff quote as an “expedited
 25 delivery fee.” Salom Payoff Quote, Ex. 16.

26 24. Nationstar provided expedited delivery of Salom’s payoff quote via fax. *Id.*; Ex. 15
 27 at 24 (showing payoff statement generated the same day as request).

28

1 25. Salom paid off the mortgage loan, and Fannie Mae released the Deed of Trust.
 2 Recorded Release, [Ex. 17](#); Salom Interrog. Resp. 3, [Ex. 18](#) (indicating he paid off the loan on July
 3 12, 2022). Salom paid the expedited delivery fee with his payoff. Salom Interrog. Resp. 6.

4 26. Salom has no personal knowledge or documentation showing that the \$25 expedited
 5 delivery fee was unfair or unlawful. Salom Dep. 34:25-35:7, 37:20-24, 38:14-15, [Ex. 19](#) (“I have
 6 no idea about the mortgage service and the fees charged. I have no idea.”).

7 27. While he did not know details regarding his agent’s request, Salom admitted that he
 8 had no reason to dispute that Nationstar’s records show his agent requested expedited delivery of
 9 the payoff quote. Salom Dep. 45:5-6, 9-10; Salom Interrog. Resp. 3 (conceding that “agents...were
 10 assisting him with the sale of his home” and “the payoff statement request was made on his behalf,
 11 but he has no personal knowledge of whether ‘expedited delivery’ was requested and or what was
 12 said about the payoff statement fee”).

13 28. Salom testified that he “didn’t realize how or who pay any kind of fees,” instead he
 14 just signed documents from the closing company. Salom Dep. 73:19-25. According to Salom, “I
 15 got my money, I’m gone.” *Id.* 74:2. He indicated that he was satisfied and happy to move on after
 16 paying off his mortgage. *Id.* 74:3-6.

17 29. Salom seeks return of all fees “imposed” related to issuance of a payoff quote.
 18 Salom Interrog. Resp. 13.

19 D. Plaintiff Catherine Palazzo

20 30. Ruben Palazzo (“Ruben”) executed an adjustable rate note on or about March 21,
 21 2007, in the amount of \$128,000 (the “Palazzo Loan”), secured by Deed of Trust against 34811
 22 Old Ocean City Road, Pittsville, MD. Note, [Ex. 20](#); Deed of Trust, [Ex. 21](#). Palazzo signed only
 23 the Deed of Trust, not the Note. *Id.*

24 31. Nationstar d/b/a RightPath Servicing began servicing the Palazzo Loan effective
 25 June 1, 2022, at which time the loan was current. Welcome Letter, [Ex. 22](#). The Deed of Trust was
 26 assigned to Nationstar on or about June 22, 2022. Assignment, [Ex. 23](#).

27 32. The Palazzos requested a “web instant payoff quote” through Nationstar’s online
 28 borrower portal on September 11, 2023. Palazzo Interrog. Resp. 6, [Ex. 7](#); Communication History,

1 **Ex. 25**; Palazzo Dep. 27:10-18, 31:11-24, **Ex. 26**; Palazzo Payoff Quote, **Ex. 27**.

2 33. In making this request, the Palazzos selected expedited delivery of the payoff quote
3 for an additional \$25.00 fee. *See* Palazzo Dep. 28:10-29:3 (not remembering the specific wording
4 but recalling that there would be a fee associated with rushed delivery). This fee was reflected on
5 the payoff quote addressed to Ruben Palazzo, listing an “expedited delivery fee.” Ex. 27.

6 34. The Palazzos understood there would be a fee for rushed delivery, but “wanted to
7 know what [the payoff quote] was right away because we were making plans.” Palazzo Dep. 28:16-
8 29:3, 33:8-9. The Palazzos were considering refinancing Ruben’s loan. *Id.* 29:4-6.

9 35. Having requested expedited delivery, Palazzo concedes they were “able to obtain
10 her payoff statement through Nationstar’s portal in seconds.” Palazzo Interrog. Resp. 12; Palazzo
11 Dep. 35:7-23, 25. The Palazzos received the “service … requested.” Palazzo Dep. 36:2-4.

12 36. Later, as part of his monthly mortgage payment, Ruben paid the expedited delivery
13 fee for the payoff statement. Palazzo Interrog. Resp. 6; NSM_SALOM 019956, **Ex. 28**.

14 37. Palazzo has not paid off the mortgage loan, Palazzo Interrog. Resp. 4, and Nationstar
15 continues to service the loan. Palazzo Dep. 29:25-30:1.

16 38. Palazzo seeks return of all fees “imposed” related to issuance of a payoff quote.
17 Palazzo Interrog. Resp. 14.

18 **E. Plaintiff Peter Hackinen**

19 39. Peter Hackinen executed a promissory note on or about December 20, 2006, in the
20 amount of \$280,000 (the “Hackinen Loan”), secured by Deed of Trust against 624 N. 138th Street,
21 Seattle, WA. Deed of Trust, **Ex. 29**.

22 40. Nationstar began servicing the Hackinen Loan effective August 15, 2011, at which
23 time the account was delinquent. Welcome Letter, **Ex. 30**; Ehinger Dep. (II) 112:10-13; Hackinen
24 Dep. 29:21-24, **Ex. 31**.

25 41. Hackinen worked with two groups to refinance his mortgage. Hackinen Dep. 30:21-
26 31:13. He did not have any knowledge of requesting a payoff statement from Nationstar because
27 he “left it up to” the loan guys to handle all the paperwork, while he “went on trust.” *Id.* 32:3-13.
28 He simply authorized “the loan guys” to “do what they needed to do,” *id.* 64:18-19, and they

requested payoff statements for the refinance effort. *Id.* 64:21-23.

42. Hackinen obtained four expedited payoff quotes. The requests on July 5, 2023, July 21, 2023, and March 11, 2024, were made by IVR, with a fourth, on October 5, 2023, via the website. See Communication History, [Ex. 32](#); Transaction History, [Ex. 33](#); Payoff Quotes, [Ex. 34](#).

43. Hackinen described the expedited fee disclosure as “black and white,” but he did not “pay any attention to that when the loan guys were working on trying to get [him] a new loan.” Hackinen Dep. 54:5-9. Hackinen “was looking for a refi and they got it done. What they did, how they did it, who they spoke to, I left it in their hands. I trusted them and that’s it.” *Id.* 39:22-25.

F. Uniform Instruments

44. The Palazzo Deed of Trust is a Single Family-Fannie Mae/Freddie Mac Uniform Instrument, which states:

14. Loan Charges. Lender may charge Borrower fees for services performed in connection with Borrower's default, for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument, including, but not limited to, attorneys' fees, property inspection and valuation fees. *In regard to any other fees, the absence of express authority in this Security Instrument to charge a specific fee to Borrower shall not be construed as a prohibition on the charging of such fee.* Lender may not charge fees that are expressly prohibited by this Security Instrument or by Applicable Law.

Ex. 21 (emphasis added). Salom and Hackinen's deeds of trust have the same terms. Ex. 12 & 29.

III. ARGUMENT

A. It would be contrary to law—and a policy harmful to consumers—to deny Plaintiffs' freedom to contract with Nationstar to obtain optional, additional services that Nationstar is not required to provide by law and that are outside the contract.

This lawsuit attacks the fundamental right of Nationstar and Plaintiffs⁴ to contract for an optional, additional service (*i.e.*, expedited processing of a payoff quote) arising entirely outside

⁴ Despite the purported assignment of claims, Am. Compl. ¶ 92, Plaintiff Palazzo does not have standing to assert offensive consumer claims against Nationstar *on behalf of her husband*. Courts routinely hold consumers cannot assert statutory claims on behalf of another consumer because they lack standing to do so. *See James v. Puget Sound Collections*, No. 22-5237 RJB, 2022 WL 2357050, at *3 (W.D. Wash. June 30, 2022) (holding that the FDCPA did not allow for assignment of claim); *Danso v. Ocwen Loan Servicing, LLC*, No. CV PX 16-1396, 2016 WL 4437653, at *4 (D. Md. Aug. 23, 2016) (“In the consumer lending context, a party ‘generally must assert his own legal rights and interests, and cannot rest his claim to relief on the legal rights or interests of third parties.’” (quoting *Wolf v. Fed. Nat’l Mortgage Ass’n*, 512 Fed.Appx. 336, 342 (4th Cir. 2013))). This bars Plaintiff Palazzo’s claims on behalf of her husband.

1 the loan agreements. Adopting Plaintiffs' theory—that a loan servicer and borrower are precluded
 2 from ever contracting for additional services not required by statute or governed by existing loan
 3 documents—runs contrary to centuries of precedent holding inviolate the freedom to contract and
 4 would harm consumers by preventing them from obtaining additional services. The Court should
 5 reject Plaintiffs' novel argument.

- 6 1. Nationstar had no duty arising from statute to provide Plaintiffs with expedited
delivery of a payoff quote and expedited delivery services fall entirely outside the
scope of the loan agreements.

8 Duties do not arise in a vacuum. “A duty can arise either from common law principles or
 9 from a statute or regulation.” *Doss v. ITT Rayonier, Inc.*, 60 Wash. App. 125, 129 (1991) (citing
 10 *Bernethy v. Walt Failor’s, Inc.*, 97 Wash.2d 929, 932 (1982)). It can also arise from contract.
 11 *Mesmer v. Maryland Auto. Ins. Fund*, 353 Md. 241, 258 (1999) (recognizing that the “source of the
 12 duties” at issue were “entirely contractual”); *Donatelli v. D.R. Strong Consulting Eng’rs, Inc.*, 179
 13 Wash. 2d 84, 92 (2013) (requiring a court to consider “what duties have been assumed by the parties
 14 *within the contract*”) (emphasis original). There are limited sources of legal duty: 1) common law,
 15 2) statute/regulation, or 3) contract. If a duty is not imposed by one of these sources, no duty exists.

16 As applicable to Plaintiffs, the only statutory requirement Nationstar has is to provide a
 17 payoff quote in response to a written (not verbal) request, within seven (7) business days. 15 U.S.C.
 18 § 1639g. And there is no requirement in any of Plaintiffs’ security instruments that Nationstar
 19 provide a payoff quote, let alone expedited delivery of a payoff quote. Instead, as this Court
 20 previously held and as numerous courts have found, the loan agreements do not cover the subject
 21 matter of payoff quotes or expedited fees at all. ECF No. 77, at 12; *see, e.g., Beyer v. Countrywide*
 22 *Hom Loans Svc’g LP*, 359 Fed. Appx. 701, 702 (9th Cir. 2009) (expedited payoff service was
 23 voluntary and extraneous to the mortgage); *Cappellini*, 991 F. Supp. 31, 39-40 (D. Mass. 1997)
 24 (“The fax and duplicate statement charges relate to special services *outside of the scope* of the basic
 25 services provided by a mortgage servicer”); *Davis v. Homecomings Fin.*, No. C05-1466RSL,

26

27

28

1 2006 U.S. Dist. LEXIS 77331, at *14 (W.D. Wash. Oct. 10, 2006) (same). Expedited delivery
 2 services fall into that category of special services that are *outside* the loan agreement.⁵

3 In the absence of a duty, Nationstar did not owe Plaintiffs an extra-contractual service:
 4 expedited processing of a payoff quote. *See Wesker v. Select Portfolio Servicing, Inc.*, No. 1:21-
 5 CV-03012-JRR, 2024 WL 4237357, at *8 (D. Md. Sept. 19, 2024) (“as a matter of law, no duty
 6 arises” from a loan servicer advertising “extra-contractual” services); *Ensor v. Wells Fargo Bank*
 7 *Nat'l Ass'n*, No. CV CCB-21-324, 2022 WL 345513, at *3 (D. Md. Feb. 4, 2022) (“offering extra-
 8 contractual” service is not “a ‘special circumstance,’ and thus does not give rise to a duty on the
 9 part of the lender to the consumer”).

10 All Plaintiffs’ arguments in this lawsuit must be considered in light of the indisputable fact
 11 that Nationstar had no common law, statutory, or contractual obligation to send Plaintiffs a payoff
 12 quote sooner than seven (7) business days. Moreover, the expedited service at issue is not
 13 encompassed by the loan agreements. Given these indisputable facts, this case turns on the simple
 14 question: ***Can the parties contract for an extra service outside the loan agreements?***

15 2. Absent a pre-existing duty, Plaintiffs had freedom of contract to accept Nationstar's
offer for expedited delivery of their payoff quotes and in return pay for that service.

16 “At root, this case is about the respect the law ought to accord agreements between private
 17 parties. **Despite recent cynicism, sanctity of contract remains an important civilizing concept.”**

18
 19
 20 ⁵ Plaintiffs have tried to turn this case into a “pay-to-pay” case so they can take advantage of case law
 21 holding that servicers cannot charge a fee to borrowers for making payments over the telephone or online
 22 without violating the FDCPA. Irrespective of the debatable merits of those decisions, a fee to expedite
 23 delivery of a payoff statement is not a “pay-to-pay fee.” Numerous courts have held that a fee to expedite
 24 delivery of a payoff statement is *not* a fee required to pay off the loan. *See, e.g., Curran v. Wash. Mut.*
Bank, FA, 2006 U.S. Dist. LEXIS 19187, at *8-9 (W.D. Ark. March 2, 2006) (a fax fee may be connected
 25 to payoff statements ordered for a litany of reasons, including “when payment is being contemplated (but
 26 not made), for general information, financial planning, updating personal records, preparing personal
 27 financial statements” and so on); *Cappellini*, 991 F. Supp. at 38 (expedited fee may be incurred in
 28 situations unrelated to prepayment and a borrower may pay a loan without obtaining a payoff statement). An
 expedited delivery fee is fundamentally different from a “pay-to-pay” fee, where the borrower *must*
 pay the fee to use a particular service to fulfill a contractual payment obligation. Unlike a “pay-to-pay”
 fee, fees for providing expedited services fall outside the scope of the loan documents. *Id.*, at 39 (while
 some fees not stated in the contracts might be barred, fax charges are not within the scope of the loan
 agreement and, like charges for federal express or requests for certified copies of documents, therefore are
 permissible).

1 *Morta v. Korea Ins. Corp.*, 840 F.2d 1452, 1460 (9th Cir. 1988) (emphasis added). While the Ninth
 2 Circuit wrote these words almost four decades ago, they remain just as applicable today.

3 “The sanctity of a contract is a fundamental concept of our entire legal structure.” *Chambers*
 4 *Dev. Co. v. Passaic Cnty. Utilities Auth.*, 62 F.3d 582, 589 (3d Cir. 1995); *Sanger v. Yellow Cab*
 5 *Co.*, 486 S.W.2d 477, 480 (Mo. 1972) (“It is the policy of the law to encourage freedom of
 6 contract.”). Contracts embody “very important ideas about the nature of human existence and about
 7 personal rights and responsibilities: that people have the right, within the scope of what is lawful,
 8 to fix their legal relationships by private agreement.” *Morta*, 840 F.2d at 1460. Considering the
 9 paramount sanctity of contract, it is unsurprising courts routinely recognize the enforceability of
 10 contracts, even when one party makes a bad deal. *Calomiris v. Woods*, 353 Md. 425, 445 (1999)
 11 (“Contracts play a critical role in allocating the risks and benefits of our economy, and courts
 12 generally should not disturb an unambiguous allocation of those risks in order to avoid adverse
 13 consequences for one party.”); *accord King Cnty. v. CPM Dev. Corp.*, 25 Wash. App. 2d 1036,
 14 2023 WL 1777235, *7 (Wash. App. Feb. 6, 2023).

15 “The principle of freedom of contract dictates that express contract clauses are **presumed**
 16 **to be enforceable.**” *Smelkinson Sysco v. Harrell*, 162 Md. App. 437, 447 (2005) (emphasis added);
 17 *Berne Corp. v. Gov’t of the Virgin Islands*, No. CV 2000-141, 2011 WL 13228471, at *1 (D.V.I.
 18 Jan. 22, 2011). Thus, because courts “recognize an overarching freedom to contract,” agreements
 19 are only “unenforceable where they are prohibited by statute,” *Jordan v. Nationstar Mortg., LLC*,
 20 185 Wash. 2d 876, 883 (2016) or are “contrary to public policy.” *Preferred Contractors Ins. Co. v.*
 21 *Baker & Son Constr. Inc.*, 200 Wash. 2d 128, 136–37 (2022) (recognizing that “parties are
 22 ordinarily free to exercise their freedom of contract”).

23 Considering the law above, the answer to the question initially posed is: ***Yes, absolutely.***
 24 Plaintiffs and Nationstar “are ordinarily free to exercise their freedom of contract.” *Preferred*
 25 *Contractors*, 200 Wash. 2d at 136–37. To invalidate the parties’ agreement, Plaintiffs must
 26 demonstrate that their agreement to pay for additional services rendered (expedited delivery) was
 27 somehow “contrary to public policy.” *Id.* Based on the undisputed facts and application of law,
 28 Plaintiffs cannot make this showing.

- 1 3. To show that charging a fee for additional services is contrary to public policy,
 2 Plaintiffs must identify a clear policy recognized by statute.

3 Showing that Plaintiffs' agreement with Nationstar to purchase optional, additional services
 4 somehow violates public policy is a high bar. Plaintiffs cannot clear this hurdle. Courts "will not,
 5 under the guise of public policy, rewrite a clear contract between the parties." *Findlay v. United*
 6 *Pac. Ins. Co.*, 129 Wash. 2d 368, 380 (1996); *Lithko Contracting, LLC v. XL Ins. Am., Inc.*, 487
 7 Md. 385, 417 (2024) ("While the Court may decline to enforce contract provisions on the grounds
 8 that they are against public policy, ... the Court will not rewrite the contracts of these parties....").

9 "In general, a contract which is not prohibited by statute, condemned by judicial decision,
 10 or contrary to the public morals contravenes no principle of public policy." *LK Operating, LLC v.*
 11 *Collection Grp., LLC*, 181 Wash. 2d 48, 85–86 (2014). When a public policy exists, "it will
 12 ordinarily be found in a regulatory statute." *Findlay*, 129 Wash. 2d at 379. Thus, "[a]bsent a
 13 statute, Washington courts are reluctant to invoke public policy as a reason to limit or avoid express
 14 contract terms." *Fluke Corp. v. Hartford Acc. & Indem. Co.*, 102 Wash. App. 237, 246 (2000), *as*
 15 *modified* (Oct. 23, 2000), *aff'd*, 145 Wash. 2d 137 (2001); *accord Willard Packaging Co. v. Javier*,
 16 169 Md. App. 109, 122 (2006) ("[P]arties have a broad right to construct the terms of contracts
 17 they enter into as they wish, providing the contract is neither illegal nor contrary to public policy.").

- 18 4. Plaintiffs do not identify any statute that prohibits servicers from offering – and from
 19 borrowers accepting—services outside the loan agreement for additional fees.

20 In their Amended Complaint, Plaintiffs do not point to any statute that explicitly *prohibits*
 21 loan servicers from changing a fee for an additional service (expedited delivery) outside the scope
 22 of the loan documents. Plaintiffs string together a hodgepodge of statutory citations to obfuscate
 23 this critical deficiency. *See* Am. Compl. ¶¶ 28-41 (FDCPA, TILA, and RESPA); ¶¶ 42-60
 24 (Maryland and Washington state consumer laws); ¶¶ 69-71 (HUD servicing requirements).

25 Plaintiffs cite the Truth in Lending Act ("TILA") to show that loan servicers, such as
 26 Nationstar, have the obligation to send a payoff statement within seven (7) business days. *Id.* ¶ 36
 27 (quoting 15 U.S.C. § 1639g). This requirement is reiterated in Regulation Z, which requires the
 28 payoff statement to be "accurate" "as of a specified date." *Id.* ¶ 37 (quoting 12 C.F.R.

1 § 1026.36(c)(3)). Plaintiffs then cite the Real Estate Settlement Procedures Act (“RESPA”) for the
 2 proposition that Nationstar is not permitted to charge borrowers for the seven (7) day payoff
 3 statement required by TILA. *Id.* ¶ 39 (12 U.S.C.A. § 2610).

4 None of this is controversial. Nationstar’s policy and procedure is to comply with each of
 5 these statutory requirements, taking into consideration both federal law, industry standards, and
 6 applicable state laws. SOF ¶ 11-13. Upon written request from a borrower, Nationstar provides a
 7 payoff statement—for free—within the statutorily allowed timeframe. SOF ¶ 5. Nothing in
 8 Plaintiffs’ legal citations indicates that Plaintiffs were *prohibited* from accepting Nationstar’s offer
 9 of an additional service beyond what was required by contract and statute and that falls outside the
 10 loan agreement: expedited delivery of a requested payoff quote. *See generally* Am. Compl.;
 11 *Calomiris*, 353 Md. at 445–46 (criticizing the trial court’s ruling because it “overlooked” the
 12 importance of enforcing the agreed contracts “in its desire to arrive at a ‘fair’ result”).

13 The remainder of Plaintiffs’ legal citations reflect general requirements regarding not
 14 unfairly collecting existing debts. *See generally* Am. Compl. ¶¶ 28-60. These citations state the
 15 unremarkable proposition that a debt collector cannot inflate the amount owed.⁶ And, this makes
 16 sense. The parties have an agreement for a product or services (here, a mortgage loan) and one
 17 party (the loan servicer) cannot unilaterally change the terms by increasing the cost to the other
 18 party. This is consistent with the basic principle of contracts that “[t]he law … requires parties to
 19 do what they have agreed to do.” *Moyer v. Mitchell*, 53 Md. 171, 177 (1880).

20 ***But the logic of this goes both ways.*** While a loan servicer cannot inflate charges for
 21 borrowers, borrowers are *not* entitled to additional services from loan servicers that were not agreed
 22 to and for which the borrower is not paying. “To say that a borrower can make such requests for
 23 his or her own benefit, yet, … never allow the mortgage servicer to charge for the services unless
 24 they are specified in the loan documents would be an unreasonable interpretation of the contracts.”
 25 *Cappellini*, 991 F. Supp. at 39-40. Just like inflating costs without providing additional services,
 26 demanding that loan servicers provide additional services without compensation *for those services*

27 ⁶ As noted above, an expedited service fee is not a “pay-to-pay” fee. Moreover, expedite fees are expressly
 28 permitted by law. *See infra* Part III.A.5-6.

1 is tantamount to one party unilaterally forcing new contract terms on the other – which the law does
 2 not allow. *Krause v. GE Capital Mortg. Servs.*, 314 Ill. App. 3d 376, 387 (2000) (“We do not
 3 believe that plaintiffs’ mortgages and notes entitled them to receive free of charge any service not
 4 specifically referenced in the contract. Therefore, we reject plaintiffs’ argument that the mortgages
 5 and notes preclude defendant from charging quote and fax fees.”).

6 Quite simply, none of Plaintiffs’ citations to legal authority demand that one party (a loan
 7 servicer) provide services (expedited delivery) to another party (the consumer) which are not
 8 encompassed by the parties’ original agreement and for which the loan servicer is not paid.⁷

- 9 5. Courts routinely hold that borrowers can request—and loan servicers may provide
 10 for an additional fee—services outside of those encompassed by the loan
documents.

11 For decades, consumers have challenged fees for additional services not subject to their loan
 12 documents, such as expedited delivery of payoff statements. And they have lost these challenges.

13 Numerous courts have analyzed challenges to fees charged by loan servicers for additional
 14 services and found that “[t]here is **nothing inequitable** about a company charging a fee for an
 15 additional service rendered.” *Davis*, 2006 U.S. Dist. LEXIS 77331, at *14; e.g., *Cassese v. Wash.*
 16 *Mut.*, No. 05 CV 2724, 2007 U.S. Dist. LEXIS 117562, at *13-14 (E.D.N.Y. Sep. 7, 2007)
 17 (dismissing TILA and RESPA claims over payoff statement fees); *Chatman v. Fairbanks Capital*
 18 *Corp.*, No. 02 C 665, 2002 U.S. Dist. LEXIS 10945, at *8 (N.D. Ill. June 13, 2002) (“Defendant is
 19 not required to specifically state every service-related fee in Plaintiffs’ note or mortgage.”);
 20 *Cappellini*, 991 F. Supp. at 39-40 (“There are a number of special services that a borrower could
 21 ask Mellon to provide that are not mentioned in the loan documents but which it appears clear that
 22 Mellon would have a right to request payment for providing.”).

23 In fact, such fees are widely recognized in the loan servicing industry. See 12 CFR
 24 § 1026.34(9)(ii) (explicitly stating that loan servicers can charge “processing fees” for payoff

26 ⁷ Indeed, the Washington Administrative Code recognizes that servicers may charge fees when those fees
 27 are agreed to, or authorized, by the borrower in exchange for extra services. See WAC 208-620-567
 28 (providing non-exclusive examples, such as wire transfer fees for a wire transfer requested by the
 borrower).

1 statements that are “comparable to fees imposed for similar services provided in connection with
 2 consumer credit transactions that are secured by the consumer’s principal dwelling and are not
 3 high-cost mortgages”—i.e., payoff quote processing fees that are charged by loan servicers for
 4 traditional mortgages); SOF ¶ 17 (citing Bryar Rep. ¶¶ 52-67) (explaining that fees for expedited
 5 payoff quotes are standard in the mortgage servicing industry and are approved by the GSEs);
 6 Alternative Mortgage Servicing Compensation Discussion Paper, FHFA (Sept. 27, 2011)
 7 (“Servicers are also entitled to certain ancillary fees under the Servicing Guidelines, which include,
 8 among other things, … charges for issuing payoff statements, [and] fax charges....”).

9 For example, Fannie Mae is a “leading source of financing for residential mortgages” in the
 10 U.S. and publishes a guide that “establishes loan servicing guidelines” for the industry. SOF ¶ 18.
 11 Fannie Mae’s servicing guide defines “allowable fees for servicing” to explicitly *include* fees for
 12 “providing expedited service....” *Id.* (quoting A2-3-05, Fees for Certain Servicing Activities,
 13 Fannie Mae (Nov. 8, 2017), <https://servicing-guide.fanniemae.com/svc/a2-3-05/fees-certain-servicing-activities>). This servicing guide is expressly sanctioned by the U.S. government agency
 14 via the FHFA, giving it the effective force of law. SOF ¶ 16. In other words, it is expressly
 15 permitted by law to charge a fee for “providing expedited service.”

16 Courts agree. While today, servicers may provide expedited transmission of payoff quotes
 17 via the internet, historically, consumers’ challenges arose in the context of a “fax” fee. *See Curran*,
 18 2006 U.S. Dist. LEXIS 19817, at *11 (defendant was entitled to summary judgment on breach of
 19 contract claim and RESPA claim for fax fee); *Stone v. Mellon Mortg. Co.*, 771 So. 2d 451, 455
 20 (Ala. 2000) (“We conclude that Mellon did not violate the terms of the note by charging the Stones
 21 the fax fee ...”); *Jurik v. Columbia Nat'l, Inc.*, 97 C 6877, 1999 U.S. Dist. LEXIS 19241, at *9
 22 (N.D. Ill. Sep. 29, 1999) (granting summary judgment to defendant because “neither the \$ 5 fax
 23 fee nor the \$ 10 quote fee constitutes a prepayment penalty” and the fees “do not constitute a
 24 deceptive act or practice”); *Beyer v. Countrywide Home Loans Svc’g LP*, 2008 U.S. Dist. LEXIS
 25 122333, at *19-20 (Apr. 18, 2008), *aff’d* 359 Fed. Appx. 701 (9th Cir. 2009) (payoff statements
 26 were not misleading when they stated that the fees were charges for “expedited payoff service”);
 27
 28

1 *Cain v. Source One Mortg. Servs. Corp.*, No. 43041-6-I, 1999 Wash. App. LEXIS 1600, at *5 (Ct.
 2 App. Aug. 30, 1999) (charging for expedited service was not a breach of contract).

3 Using a potpourri of legal theories over multiple decades, consumers have sought to coerce
 4 loan servicers into providing services that consumers are not entitled to by law or by contract for
 5 free. Courts around the United States, have rejected these attempts. This Court should do the same.

6 6. Allowing borrowers to purchase optional, additional services from loan servicers is
not only permitted by law but is sound policy.

7 Not only is it the law to allow loan servicers and consumers to agree to additional services
 8 outside of the loan agreements, doing so is just sound policy. There are two reasons for this.

10 First, providing a consumer with expedited delivery of a payoff quote provides the
 11 consumer something of value to which the consumer is not otherwise entitled: *time*. By obtaining
 12 a payoff quote in hours or minutes instead of days, a consumer may use the payoff quote to obtain
 13 a mortgage loan refinance or pay off a home mortgage *a week sooner*. By providing expedited
 14 services, a loan servicer is providing “an accommodation of [the consumer’s] special request,”
 15 which they are not otherwise obligated to do. *Cain*, 1999 Wash. App. LEXIS 1600, at *1; *Davis*,
 16 2006 U.S. Dist. LEXIS 77331, at *14 (finding the consumer “received the benefit of receiving the
 17 statement in an expedited manner”); *Krause*, 314 Ill. App. 3d at 385-86 (“[T]he fax and quote fees
 18 in this case were charged for *special services that plaintiffs requested*.”) (emphasis added).

19 Second, allowing loan servicers and consumers to contract for additional services in
 20 exchange for a fee keeps the overall interest rate down for consumers while allowing consumers
 21 who desire special services to still obtain those services. Contrary to Plaintiffs’ position, the FHFA
 22 and the GSEs do *not* treat expedited service fees as “junk fees.” SOF ¶ 19. The GSEs depend on
 23 loan servicers to service GSE loans. *Id.* Consequently, the GSEs face the risk that inadequate
 24 servicer compensation will lead to insufficient investments in proper loan servicing. *Id.*
 25 Conversely, if servicer compensation is excessively high, it may render the loans unaffordable for
 26 borrowers. *Id.* The goal of FHFA and the GSEs is “to provide borrowers with ‘[a]ccess to a
 27 competitive, inexpensive mortgage market’ while at the same time ensuring that servicing is
 28 ‘profitable.’” *Id.* (quoting *FHFA Directive in Coordination with HUD* (February 2011)). Fees for

1 additional services, such as expedited processing, help “strike a balance between servicer
 2 profitability and affordability for borrowers.” *Id.* If servicers were prohibited from charging fees,
 3 “FHFA and the GSEs would have to increase the servicing fee for loans. That increase would, in
 4 turn, increase the cost of loans for every borrower since, as explained above, the servicing fee is
 5 paid out of a loan’s interest income, which is paid by all borrowers.” *Id.* The reciprocal, however,
 6 is also true. Charging these fees separately means that “all borrowers – including those who elect
 7 to use ancillary services – *pay lower interest rates.*” *Id.* Allowing loan servicers to offer extra,
 8 valuable services to borrowers for extra fees honors centuries of contract law. It is also good policy.

9 **B. Based on the undisputed material facts, Nationstar is entitled to summary judgment
 10 on Plaintiffs’ claims.**

11 1. Nationstar is entitled to summary judgment on Plaintiffs’ unjust enrichment claim.

12 In Count I, Plaintiffs allege a claim for unjust enrichment based on Nationstar’s allegedly
 13 improper charging of an expedited delivery fee for payoff quotes. Am. Compl. ¶¶ 160-174.

14 Unjust enrichment entails “(1) conferral of the benefit, (2) knowing acceptance or retention
 15 of the benefit, and (3) lack of adequate compensation for the benefit.” *Bircumshaw v. State*, 194
 16 Wash. App. 176, 205 (2016); *Transamerica Premier Life Ins. Co. v. Selman & Co., LLC*, 401 F.
 17 Supp. 3d 576, 597 (D. Md. 2019) (same). “The general rule is that an unjust enrichment claim may
 18 not proceed when an enforceable contract exists.” See ECF No. 77, at 12. But when the initial
 19 contract “does not cover the subject matter at issue,” the parties can make another agreement. *Id.*

20 Here, the Court previously held that the loan documents, which were “silent as to the
 21 challenged fees,” did not cover the subject matter and, therefore, Plaintiffs’ unjust enrichment claim
 22 survived Nationstar’s motion for judgment on the pleadings. *See id.* at 13. Thus, the only operative
 23 contractual arrangement between the parties related to the expedited service fee was Nationstar’s
 24 offer to provide expedited delivery of a payoff quote for \$25, Plaintiffs’ acceptance of Nationstar’s
 25 offer, Nationstar’s performance by expedited delivery, and Plaintiffs’ \$25 consideration for the
 26 special services. *See Beyer*, 359 F. App’x at 702 (“The expedited payoff service was voluntary and
 27 extraneous to the mortgage.”).

28

1 As explained in detail above, this was an entirely proper contract for a service, enforceable
 2 under the law. There are no facts showing that there was a one-sided conferral of a benefit,
 3 improper retention by Nationstar of the same, or lack of adequate service to Plaintiffs in exchange.
 4 SOF ¶ 20-43. Plaintiffs voluntarily contracted with Nationstar to obtain valuable services that
 5 Plaintiffs would not otherwise have received. Plaintiffs' claim for unjust enrichment fails. *Stone*,
 6 771 So. 2d at 456 (affirming summary judgment for mortgage servicer on unjust enrichment claim)

7 2. Nationstar is entitled to summary judgment on Plaintiff Hackinen's FDCPA claim.

8 Next, in Count III,⁸ Plaintiff Hackinen⁹ asserts on behalf of the FDCPA Subclass that
 9 Nationstar's payoff statement fees violate 15 U.S.C. § 1692f(1), Am. Compl. ¶ 190, which prohibits
 10 a debt collector from "collect[ing] ... any amount ... unless such amount is expressly authorized by
 11 the agreement creating the debt or permitted by law." 15 U.S.C. § 1692f(1).

12 There are four elements of a FDCPA cause of action: (1) the plaintiff is a "consumer" under
 13 15 U.S.C. § 1692a(3); (2) the debt arises out of a transaction entered into for personal purposes; (3)
 14 the defendant is a "debt collector" under 15 U.S.C. § 1692a(6); and (4) the defendant violated one
 15 of the provisions contained in 15 U.S.C. §§ 1692a – 1692o. *See Minichino v. Piilani Homeowners*
 16 *Ass'n*, No. 16-00461, 2016 WL 5796799, at *4 (D. Haw. Sept. 30, 2016).

17 The record shows that Nationstar contracted with Plaintiffs to provide them a specific
 18 service: expedited processing of their payoff quotes. This service fell outside the scope of their loan
 19 agreements, so Plaintiffs contracted with Nationstar to provide a separate, optional service.
 20 Plaintiffs specifically agreed to a \$25 fee for Nationstar's expedited delivery service. SOF ¶ 20-
 21 43. Given the terms of this separate contract, there can be no doubt that Nationstar received from
 22 Plaintiffs the \$25 consideration that was *expressly authorized* by the parties' agreement. No one
 23 coerced Plaintiffs into obtaining this optional service. They requested it from Nationstar. And
 24 there is no doubt that the \$25 fee was clearly disclosed. Plaintiffs agreed to the fee, making the

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 26

⁸ The Court previously dismissed the breach of contract claim asserted in Count II against Freddie Mac
 27 and the Defendant Class. ECF No. 85.

28 ⁹ Plaintiffs Salom and Palazzo do not assert violations of the FDCPA. Indeed, they cannot because neither
 loan was in default when servicing transferred to Nationstar. SOF ¶¶ 21, 31.

1 collection of the fee expressly authorized by the agreement. As stated above, the expedited service
 2 fee is routinely used in the industry and authorized by contract law.

3 Moreover, simply sending a payoff quote is not an attempt to collect debt. Plaintiff
 4 Palazzo's husband already litigated this exact issue—and lost. *Palazzo v. Bayview Loan Servicing*
 5 *LLC*, No. CV DLB-20-2392, 2024 WL 4361857, at *11 (D. Md. Sept. 30, 2024) (“[T]he payoff
 6 statement was not an attempt to collect debt.... The statement does not demand payment
 7 immediately or by a certain date, and the amounts included in the statement cannot be reasonably
 8 viewed as a demand for payment.... The payoff statement does not list Palazzo’s monthly
 9 obligation or include a payment coupon.... The ‘animating purpose’ of the payoff statement clearly
 10 was to provide Palazzo with information on his mortgage account, not to demand payment. The
 11 fact that Bayview sent this statement at Palazzo’s request is yet another reason why the payoff
 12 statement is not an attempt to collect a debt.”); *accord Chaudhry v. Gallerizzo*, 174 F.3d 394, 401
 13 (4th Cir. 1999) (“[The payoff] letter was not an act to collect a debt, but rather was sent at Fox’s
 14 request so that she could have an accurate payoff figure at the refinancing meeting.”). This alone
 15 bars any FDCPA claim.

16 Plaintiff Hackinen’s claim under the FDCPA fails as a matter of law. He purchased a
 17 service from Nationstar. He acknowledges it was beneficial (SOF ¶ 43), and he cannot prevail on
 18 a claim that collecting the fee he agreed to, for a service he purchased, was somehow improper.

19 3. Nationstar is entitled to summary judgment on Plaintiffs’ claim for violations of
state debt collection and mortgage servicing laws.

20 Finally, Nationstar is entitled to summary judgment on Plaintiffs’ miscellaneous claims for
 21 violations of state debt collection and mortgage servicing laws. In Plaintiffs’ final claim they assert
 22 generalized “Violations of State Debt Collection and Mortgage Servicing Laws.” Am. Compl.
 23 Count IV. Plaintiffs attempt to assert a claim for violations of “the laws of any and all of the fifty
 24 states and the District of Columbia that regulate the conduct of debt collectors and/or mortgage
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1 servicers in consumer transactions.” *Id.* ¶ 204. Plaintiffs’ basic claim appears to be that Nationstar
 2 collected the \$25 expedited delivery fee without authority to do so, in violation of state laws.¹⁰

3 Beyond the glaringly improper pleading,¹¹ Plaintiffs’ generalized claims fail because the
 4 applicable law does not prevent Nationstar from offering expedited services for a fee. In the interest
 5 of brevity, Nationstar will not repeat the pages of argument above. Suffice it to say that none of
 6 Plaintiffs’ citations to state laws¹² explicitly prohibit a loan servicer from contracting to provide an
 7 expedited service, for a fee, to borrowers. *See generally* Am. Compl.

8 Plaintiffs’ state law claims fail broadly on several other common elements:

- 9 • With respect to all of the state statutes that include some element of deception or
 10 misrepresentation, *e.g.*, *Hangman Ridge Training Stables, Inc. v. Safeco Title Ins. Co.*, 719
 11 P.2d 531, 533 (Wash. 1986) (identifying unfair or deceptive act or practice as an element
 12 of the WCPA claim); *Lloyd v. General Motors Corporation*, 916 A.2d 257, 277 (Md. App.
 13 Ct. 2007) (same element under MCPA), there are precisely *zero facts* indicating that
 14 Nationstar acted deceptively or misrepresented the fee for expedited delivery of a payoff
 15 quote. Nationstar offers to expedite delivery of payoff quotes for \$25. SOF ¶ 6. A borrower
 16 can purchase expedited delivery only after being informed of the fee for the service and
 17 consenting to the fee. SOF ¶ 9. For example, before Palazzo could order expedited delivery
 18 of her payoff statement on Nationstar’s website, she had to read a disclosure and

20 ¹⁰ To the extent that Count IV is derivative of the FDCPA, neither Mr. Salom nor Ms. Palazzo can rely on
 21 the FDCPA because their loans were current when transferred to Nationstar. Dkt. # 35-5; Dkt. # 35-7.
 22 Based on these faults alone the derivative Count IV claim should be dismissed.

23 ¹¹ Plaintiffs have not suffered an invasion of a legally protected interest under other states laws and thus
 24 lack standing to assert claims under such laws. *See, e.g., In re Packaged Ice Antitrust Litig.*, 779 F. Supp.
 25 2d 642, 657 (E.D. Mich. 2011) (collecting cases for proposition that “plaintiffs lack standing to assert
 26 claims under the laws of the states in which they do not reside or in which they suffered no injury”).
 27 Likewise, this Court lacks jurisdiction over state law claims arising outside Washington State. For a court
 28 to “exercise specific jurisdiction over a claim, there must be an affiliation between the forum and the
 underlying controversy, principally, [an] activity or an occurrence that takes place in the forum State.”
Bristol-Myers Squibb Co. v. Superior Court of Cal., 582 U.S. 255, 264 (2017). “When there is no such
 connection, specific jurisdiction is lacking regardless of the extent of a defendant’s unconnected activities
 in the State.” *Id.*

2 ¹² Nationstar only offers expedited delivery of payoff quotes for an extra fee in states that do not prohibit
 such fees. SOF ¶¶ 2, 8, 13.

affirmatively agree to the fee. SOF ¶ 33. This is not deceptive. *Beyer*, 359 F. App'x at 702 (voluntary selection of expedited payoff service was not “deceptive” under the CPA).

- For state statutes that require attempting to collect a debt without the legal authority to do so, these claims fail because Nationstar had legal authority to collect a \$25 fee pursuant to the parties’ agreement. *Pugh v. Corelogic Credco, LLC*, No. DKC-13-1602, 2013 WL 5655705, at *4 (D. Md. Oct. 16, 2013) (identifying MCDCA element that “that Defendant attempted to collect the debt knowing that it lacked the right to do so”).
- Finally, for all the consumer statutes that require actual damages, e.g. *Lloyd*, 916 A.2d at 277 (requiring actual damages for MCPA claim), Plaintiffs’ claims must fail. If Plaintiffs did not want to pay the expedited service fee, they could have requested the payoff quotes on a regular, instead of expedited, basis. SOF ¶ 5. Had they done so, Nationstar would not have charged them any fee for the payoff quote. SOF ¶ 9. Of course, they also would not have gotten the payoff quote as quickly. Plaintiffs voluntarily chose to pay \$25 for expedited delivery of their payoff quotes. They cannot demonstrate any actual damages resulting from this choice. *Paris v. Steinberg & Steinberg*, 828 F.Supp.2d 1212, 1218 (W.D. Wash. 2011) (dismissing CPA claim because consumer failed to allege actual damages).

In the end, Plaintiffs’ state law claims are victims of Plaintiffs’ central—but fundamentally flawed—premise that a fee for expedited service is *prohibited* by law. It is not. As explained above, fees for expedited services (such a faxing a payoff quote) are presumed enforceable as a matter of contract law, routinely used in the industry, and repeatedly upheld by courts.

IV. CONCLUSION

For nearly two centuries, American law has recognized that “the obligation of private contracts has been regarded by all civilized people, as of the highest and most inviolable sanctity; and according to our fundamental law, there is no power in the land by which the obligation of such contracts can be in any manner lessened or impaired.” *Clagett v. Salmon*, 5 G. & J. 314, 327–28 (1833) (opinion of Chancellor Bland). Plaintiffs ask this Court to deny consumers the right to contract with Nationstar for an additional service. The Court should soundly reject this invitation and grant summary judgment on Plaintiffs’ claims against Nationstar in their entirety.

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